REMARKS

Claims 56-63 are added herein. Claims 1, 3, 4, 6-16, 18-25, 28-41 and 44-63 will be pending upon entry of the amendment, of which claims 1, 24, and 41 are independent.

The following remarks are responsive to the non-final Office Action mailed August 21, 2006.

Rejection Under 35 U.S.C. § 112, first paragraph

All pending claims are rejected under 35 U.S.C. § 112, first paragraph. Applicants note that a similar rejection was raised in the first Office action mailed October 4, 2005. After amending the claims in their February 6, 2006, Response to the first Office Action to recite additional structure, and submitting reasons why the claims were sufficiently enabled, the Office issued a final Office action mailed May 1, 2006 in which no rejection under 35 U.S.C. § 112, first paragraph (or second paragraph) was made. Accordingly, Applicants submit that the remarks in their February 6, 2006, Response to the first Office Action overcame this issue. Applicants are therefore rather surprised to see the issue raised once again, particularly in view of the additional amendments made in their Amendment B to yet add further structure to the claims.

According to the present Office Action, the claims are defined by "functional characteristics or properties defined by the use of parameters" and "cover all products having these characteristics or properties[.]" Therefore, according to the Office Action, although enabling for the specifically taught exemplary embodiments, the specification "does not reasonably provide enablement for other products having the characteristic or properties as covered by the claims [and] does not enable

any person skilled in the art . . . to make the invention commensurate in scope with these claims."

Applicants submit that the Office action fails to set forth a prima facie case of lack of enablement. Specifically, to make out a prima facie case regarding the scope of enablement, the Office must 1) identify the claimed subject matter for which the specification is enabled; 2) identify aspects of the claims for which the specification is not enabling; and 3) identify the claimed subject matter for which the specification is not enabling. MPEP 706.03(c). In addition, the Office must explain why the specification is not enabling, applying the factors set forth in *In re Wands*. Id.

The Office action merely lumps all of the claims together and states that all of the claims are broader than what the specification enables because they cover all products having the recited characteristics or properties. This is a conclusory statement unsupported by any evidence. Moreover, a number of the claims positively recite more structure than others. For example, dependent claims 18-20, which depend from claim 1, recite additional structure that is not positively recited in claim 1. However, the Office action does not explain why the additional structure recited in these claims is still non-enabled as being broader than what the specification enables.

Applicants also note that on page 3 of the first Office action October 4, 2005 the Office particularly recognized a number of claims (most of which are still pending in this case) as being clearly defined, supported and disclosed. This included what was then original claims 2, 5 and 17, the subject matter of which has subsequently been added to claim 1. Thus,

the Office's lack of enablement argument with respect to at least these claims is unclear.

Applicants also traverse the Office's rejection on at least three grounds.

First, Applicants disagree with the Action's assertion that the claims cover all products having the specified characteristics or properties. Independent claims 1, 24 and 41 each require at least an absorbent structure sized and configured for insertion at least partially within the vestibule of the female wearer. Claims 1 and 41 each further require about five to about thirty-five weight percent of superabsorbent material, and independent claim 24 requires about five to about fifteen weight percent of superabsorbent material (clearly non-functional language). Claim 1 also requires a liquid permeable liner (non-functional), and outer cover (non-functional) and the absorbent structure being between the liner and the outer cover (also non-functional. Claim 1 further requires that the absorbent structure have hydrophilic fibers (also non-functional). Moreover, claims 24 and 41 further specify basis weight and density of the absorbent structure (also clearly non-functional language). Thus, the claims only cover articles that meet those non-functional recitations, not any and all articles that meet the property recitations the Action asserts are functional.

Second, Applicants submit that the recitations in question - saturation capacity, retention capacity, intake time, rewet, gel index, etc. - are structural in nature, not functional. In particular, functional language describes an item in terms of what it does, whereas structural language describes an item in terms of what it is. See, e.g., Application of Swinehart, 439 F.2d 210, 212 (C.C.P.A. 1971). Here, although the subject

attributes might be more difficult to measure than, say, length, weight, or color of a device, they are nevertheless structural properties of the device itself. In other words, the language describes what the device is, not what it does.[1]

The fact that, for example, claim 1 recites that the absorbent structure has a particular saturation capacity does render it functional simply because the saturation capacity is a measure of how much menses simulant can be taken into and retained by an absorbent structure after being subjected to a slight compressive load. Consider, as another example, a bottle having a specified interior volume. The specified volume is not functional simply because it holds a particular amount of liquid. Rather, the specified interior volume defines the structural features of the bottle, i.e., so that the structure of bottle has the specified interior volume. The characteristics recited in the claims of the present application define a particular combination of structural features and are therefore not functional.

Third, even if the subject recitations are deemed to be functional in nature, that does not, in and of itself, render the specification non-enabling with respect to the scope of subject matter encompassed by such limitations. In other words, there is no per se rule of non-enablement of functional

[1] The Swinehart Court noted that previous concern over the use of functional language "at the point of novelty" arose "largely from the fear that an applicant will attempt to distinguish over a reference disclosure by emphasizing a property or function which may not be mentioned by the reference and thereby assert that his claimed subject matter is novel." Swinehart at 212. Such concern should not arise here, as it has been emphasized previously that the issues in this case relate to obviousness, not novelty.

limitations, as the Action seems to suggest. Rather, all that is required is that the specification enable one having skill in the art to practice the claimed invention without undue experimentation. See, e.g., Spectra-Physics, Inc. v. Coherent Inc., 827 F.2d 1523, 1533 (Fed. Cir. 1987)("Thus, it is sufficient here with respect to enablement that the patents disclose at least one attachment means which would enable a person of ordinary skill in the art to make and use the claimed inventions."(emphasis added)). In this regard, as noted previously at page 14 of the Response to the First Office Action, Spectra-Physics also instructs that "[i]f an invention pertains to an art where the results are predictable, e.g., mechanical as opposed to chemical arts, a broad claim can be enabled by disclosure of a single embodiment[.]" Id., citations omitted. Given the mechanical nature of the invention being claimed in the present application, Applicants submit that the several disclosed embodiments adequately enable practice of the invention as claimed, and Applicants respectfully request that the rejection be withdrawn.

Moreover, no undue experimentation is necessary to practice the full scope of the claims. In particular, the manner in which each of the tests recited in the claims is to be conducted is specifically set forth in the present specification. See *In re Wands*, 858 F.2d 731, 737, 8 USPQ2d 1400, 1404 (Fed. Cir. 1988). Thus, based on the present specification, one skilled in the art could readily make an absorbent structure that has the recited structure and meets the recited performance characteristics.

For all of the above reasons, applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 112, first paragraph.

Rejections of Claims Under 35 U.S.C. § 103

Claim 24

Claim 24 stands rejected under 35 U.S.C. § 103(a) as being obvious in view of Bewick-Sonntag et al. (U.S. 2003/0191442 A1) ("Bewick") in combination with Dulle (U.S. 3,856,013), Zelazoski et al. (U.S. 5,536,555) and Brandt et al. (U.S. Re. 32,649). Applicants respectfully traverse the rejection. In particular, claim 24 is submitted to be non-obvious in view of and patentable over the references of record in that whether considered alone or in combination the references fail to disclose or suggest an absorbent article having an absorbent structure that is 1) sized and configured for insertion at least partially within the vestibule of the female wearer, 2) comprised of 5 to 15 weight percent superabsorbent material and 3) has the recited basis weight, density, retention capacity and saturation capacity. For example, the superabsorbent material concentration in the recited range provides for improved intake times during use of the absorbent article while still providing the recited saturation and retention capacities. See, for example, codes 8 and 10 of Fig. 12 of the present application.

As applicants noted in their previous response, Bewick (see paragraph 0114 thereof] disclose a superabsorbent fiber concentration in the range of 25-100 percent, and in a particularly preferred embodiment it is 70 percent. The Examples of Bewick each disclose an absorbent core having a superabsorbent concentration of 50 percent. Thus, Bewick clearly fails to teach a superabsorbent material concentration

in the range of about 5 to about 15 percent as recited in claim 24. Nowhere does the Office action address this issue.

Nonetheless, according to the Office Action with regard to claim 24 Bewick discloses the claimed invention except for the specified "performance test vectors" and various physical parameters. In particular, as best as Applicants can discern[2], the Office's position is that 1) the recited "test parameters" are functional, not structural, and therefore can not be used to differentiate over the prior art; and 2) the recited combination of physical parameters would have been obvious as the result of mere optimization. Applicants respectfully disagree.

With respect to the first proposition (that functional language can not be used to differentiate an apparatus over the prior art), the Office action cites to In re Schreiber, 128 F.3d 1473, 1477-78 (Fed. Cir. 1997) as support. Applicants respectfully submit that Schreiber has been misapplied in this instance. The claims at issue in Schreiber recited a conical dispenser top for dispensing popcorn that would allow just a few popped kernels of corn to pass through at a time. The Court specifically explained that the functional limitations

[2] At times the Office action refers only to independent claim 24, but at other times the Office action refers to multiple claims, including independent claims 24 and 41 and various claims depending therefrom. Therefore, correlation between assertions in the Office action and specific claims being rejected is somewhat ambiguous. It also unclear as to what the Office deems a performance test vector and what it deems a physical parameter. For example, the Office action refers to length, density and thickness as physical parameters, but does not refer to the superabsorbent material concentration recited in claim 24 as being a physical parameter, although it clearly is not a "performance test vector."

had not been given weight by the Examiner or the Board *because they had been found to be inherent in the prior art*, which showed a conical spout for dispensing, e.g., oil from an oil can. Schreiber at 1475, 1478.

In upholding the rejection, the Court explained – citing Swinehart, supra – that an applicant may choose to recite features of an apparatus structurally or functionally, but that if the Office has reason to believe the prior art inherently possesses the recited characteristic, the Office may require the applicant to show that the subject matter shown in the prior art does not exhibit the characteristic relied on for patentability. Because the prior art oil-dispensing cone inherently would have had the popcorn-limiting attributes, recitation of the popcorn-limiting attributes did not render the claims allowable over the prior art (even though the prior art may have been silent with respect to such features). That does not, however, support the proposition that recitation of functional attributes is not entitled to patentable weight at all, as the Office apparently asserts.[3] Moreover, as discussed previously, the characteristics recited in claim 21 are structural recitations and not functional.

With regard to optimization, the Office action asserts (with regard to claims 24, 25, 30, 39-31, 54, and 55, not just with regard to claim 24) that differences in test characteristics or parameters such as size, temperature, concentration, density, etc. will not support patentability

[3] In fact, in Swinehart, the language at issue – that the claimed composition was transparent to infrared rays and taken to be functional – specifically rendered the subject claim allowable over prior art compositions that were chemically the same but not transparent to infrared rays.

unless there is evidence indicating such characteristic is critical. Additionally, the Office action notes as it has previously that a parameter must be recognized as a result-effective variable before the determination of the optimum or workable ranges of that variable might be characterized as routine experimentation.

Apparently responding to Applicants' previous traversal on the grounds that the prior art does not show the various claim-recited values to be result-effective parameters, the Office cites Dulle (column 2, lines 37-59) for allegedly teaching that "maximizing saturation capacity of an absorbent article aids in preventing the article from exceeding that capacity, beyond which it can not absorb more fluid;" and Brandt (column 1, lines 38-55) for allegedly teaching that "maximizing the total fluid capacity of an absorbent article is desirable." In other words, according to the Office action, "[t]hese secondary references show that was [sic] known to be desirable to optimize these parameters, making the claimed values result-effective variables [such that one] of ordinary skill in the art would have recognized that increasing capacity and/or retention, intake time and rewet performance would allow the absorbent article to larger [sic] fluid insults or fluid insults of longer duration and avoidance of rewet when the article is in use."

Presumably, then (although not stated in the Office action), the Office's position is that it would have been obvious to one skilled in the art in view of Dulle and Brandt to modify Bewick to a) have the recited saturation capacity and b) have the recited retention capacity. Applicants respectfully disagree.

First, Applicants submit that the cited reference passages do not support the Office's position regarding optimization. Dulle is directed to the macroscopic or overall geometry of and construction techniques for making foam tampons. The cited passage (column 2, lines 37-59) reads as follows:

> Catamenial tampons are subject to four distinct kinds of failure: bypass, partitioning, compression, and exceeding saturation capacity. Bypass failure occurs when the menses travels the length of the vagina without contacting the tampon, i.e., the tampon fails to intercept the flowing menses. This generally occurs because the tampon does not fill the cross section of the vagina. Partitioning failure occurs when the menses flow rate past a particular area of the tampon is greater than the absorption rate into the tampon in that area. Thus, although some of the menses is absorbed, that flow which is greater than the absorption rate into the tampon proceeds past the tampon and out the introitus. This partitioning occurs many times because the tampon surface is blocked by mucus secretions, clotted blood, or endometrial debris. Compressive failure occurs when the user inadvertently brings pressure to bear on a tampon which has absorbed menses, and this pressure is great enough to "squeeze" the menses from the tampon. Exceeding the saturated capacity occurs when the tampon has absorbed all the fluid it can, and for every drop added thereafter, another drop must leave the tampon.

Applicants submit that nothing in that passage, which teaches the various manners in which tampons fail, suggests that saturation capacity be maximized. Nor does Dulle teach anywhere therein that the foam materials used to make the tampons disclosed by Dulle are intended to "maximize" saturation capacity.

Although Brandt is more germane to the present invention than Dulle in that Brandt is directed to the composition of an absorbent layer for use, e.g., in diapers, sanitary napkins,

etc., the cited passage (column 1, lines 38-55) reads as follows:

> Frequently hydrogel-forming absorbent materials comprise polymers of polymerizable unsaturated carboxylic acids or derivatives thereof, such as acrylic acid and/or alkali metal and alkyl acrylates. These polymers are rendered water-insoluble by cross-linking the carboxyl group-containing polymer chains using conventional cross-linking agents such as di- or poly-functional monomer materials. The degree of cross-linking in hydrogel and hydrogel-forming materials not only determines their water-solubility but is also an important factor in establishing two other characteristics of fluid absorbing hydrogels, i.e., absorbent capacity and gel strength. Absorbent capacity of "gel volume" is a measure of the amount of water or body fluid which a given amount of hydrogel-forming material will absorb. Gel strength relates to the tendency **[**of**]** *or* the hydrogel formed from such material to deform or "flow" under an applied stress.

While this passage teaches the desirability of providing a superabsorbent material having an increased absorbent capacity, there is no teaching whatsoever by Brandt that it is desirable to maximize the retention capacity of an absorbent structure made from this superabsorbent material.

Most importantly, the absorbent article recited in claim 24 (and the other claims of the present application, for that matter), and more particularly the absorbent structure therein, is not constructed to maximize each of the various "test vectors" as the Office asserts would be obvious. For example, Bewick clearly teaches using a substantially greater superabsorbent material concentration (i.e., greater than the 5-15 percent recited in claim 24) that would likely provide a higher saturation and/or retention capacity than what is recited in claim 24. Thus, one skilled in the art reading

Dulle and/or Brandt would be motivated not to decrease the superabsorbent material concentration of the absorbent structure of Bewick because doing so would reduce the saturation capacity and/or retention capacity, not maximize it.

Also, the only data provided by Bewick regarding the absorbency provided by the superabsorbent material is the data in Fig. 23 for Examples 2-5 wherein the HGW Capacity is identified as 7.3 grams. This data was obtained at a superabsorbent material concentration of 50 percent. There is no disclosure by Bewick, however, as to what happens to this capacity as the superabsorbent material concentration goes down to 25 percent, let alone below 25 percent or even in the range of 5-15 percent as recited in claim 24. Thus, there is no reason that one skilled in the art would believe, based on the disclosure of Bewick, that the saturation capacity and/or the retention capacity would remain in the range recited in claim 24 if the superabsorbent material concentration was reduced from 50 percent down to about 5 to about 15 percent as recited in claim 24. Indeed, based on the express teachings of Bewick not to go below 25 percent, one skilled in the art would not be motivated to do so.

Rather, the absorbent structure construction recited in claim 24 is directed to balancing a combination of factors to achieve good saturation and retention capacity while still allowing for a good fluid intake rate - something that had not been achieved with prior products. (See the first full paragraph on page 17 of Applicants' response to the first Office Action.) That is, for example, as can be seen from the data in Table 12 of the present application, as the saturation capacity and more particularly the retention capacity increases, the intake time for a first insult and even more so

for a second insult gets worse. While the saturation and/or retention capacity of the absorbent structure could be maximized as the Office seems to suggest is the goal of one skilled in the art based on Dulle and Brandt, doing so would further undesirably worsen the intake performance. Thus, the construction of the absorbent structure recited in claim 24 does not "maximize" saturation capacity and retention capacity but rather balances it with the need for improved intake performance.

Intake performance is clearly not a concern set forth in Bewick. Accordingly, one skilled in the art would not have been motivated by Dulle and Brandt to modify Bewick to sacrifice saturation capacity and/or retention capacity for the sake of improved intake performance.

To this end, the Office action further relies on Zelazoski as teaching the desirability of minimizing intake and rewet properties. However, Zelazoski clearly render this teaching only with respect to body-side liner material and not to absorbent structures, particularly absorbent structures that contain superabsorbent material. See, e.g., column 3, lines 30-45. There is clearly no teaching or even a suggestion for minimizing the intake and rewet performance of an absorbent structure, and in particular an absorbent structure such as that recited in claim 24 as comprising superabsorbent material. Moreover, applicants again note that the absorbent structure recited in claim 24 is not intended to "minimize" intake performance. See, e.g., the Table of Fig. 12 again in which the intake times for the control samples (1-5) were, on the whole, much less than the intake times for the absorbent structures (6-11) according to the present invention.

One skilled in the art would not be motivated by Zelazoski to sacrifice intake and rewet performance to assure better saturation and retention capacity performance.

For all of the above reasons, Applicants respectfully submit that claim 24 is non-obvious in view of and patentable over the cited references.

Claims 25, 28-40 and new claims 60-62 depend directly or indirectly from claim 24 and are submitted to be patentable over the references of record for the same reasons as claim 24.

Claim 41

Claim 41 stands also rejected under 35 U.S.C. § 103(a) as being obvious in view of Bewick-Sonntag et al. (U.S. 2003/0191442 A1) ("Bewick") in combination with Dulle (U.S. 3,856,013), Zelazoski et al. (U.S. 5,536,555) and Brandt et al. (U.S. Re. 32,649). Applicants respectfully traverse the rejection. In particular, claim 41 is submitted to be non-obvious in view of and patentable over the references of record in that whether considered alone or in combination the references fail to disclose or suggest an absorbent article having an absorbent structure that is 1) sized and configured for insertion at least partially within the vestibule of the female wearer, 2) comprises in the range of about 5 weight percent to about 35 weight percent superabsorbent material, 3) has a basis weight in the range of about 150 to about 400 grams per square meter and a density in the range of about 0.05 to about 0.13 grams per cubic centimeter, and 4) has an intake time for a first insult of said absorbent structure as determined by an Intake and Rewet Test of no more than about 30 seconds.

Bewick fails to expressly or inherently disclose an intake time for a first insult of said absorbent structure as determined by an Intake and Rewet Test of no more than about 30 seconds. Moreover, there is no suggestion found anywhere in Bewick (nor has the Examiner asserted otherwise) for modifying the absorbent core thereof to have the recited intake time.

Rather, the Office's position with respect to claim 41 (as best understood by applicants) is that it would have been obvious in view of the teachings of Zelazoski to minimize intake time.

However, Zelazoski is specifically directed to a bodyside liner material that has an improved intake time and rewet. See, e.g., column 8, lines 17-20 at which Zelazoski disclose the basis weight of the liner being about 14 to about 75 gsm (compare this to the basis weight of the absorbent structure recited in claim 41 as being at least twice that of Zelazoski). Thus, the teachings of Zelazoski are limited entirely to the construction and operation of the topsheet. There is no teaching or suggestion of the relationship between an absorbent structure such as that of Bewick and intake time (or intake rate) of the absorbent structure. Rather, at the most one skilled in the art may be motivated by Zelazoski to modify the topsheet of Bewick in the manner disclosed by Zelazoski However, such a teaching does not amount to a teaching that intake time is a result-effective variable for an absorbent core and would not motivate one skilled in the art to modify the absorbent core of Bewick to provide the intake time recited in claim 41.

Moreover, applicants note that the absorbent structure recited in claim 24 is not intended to "minimize" intake performance. See, e.g., the Table of Fig. 12 again in which

the intake times for the control samples (1-5) were, on the whole, much less than the intake times for the absorbent structures (6-11) according to the present invention.

For these reasons, claim 41 is submitted to be non-obvious in view of and patentable over the cited references.

Claims 44-55 and new claim 53 depend directly or indirectly from claim 41 and are submitted to be patentable over the references of record for the same reasons as claim 41

Claim 1

Claim 1 stands rejected under 35 U.S.C. § 103(a) as being obvious in view of Bewick, Dulle, Brandt, and Zelazoski as applied to claims 24, 25, 28-33, 36-41, 44-48, and 51-55, and further in view of Bewick-Sontag et al. (U.S. 5,836,929) ("Bewick '929"), on which the Action relies for disclosure of an absorbent article having an absorbent core made from a blend of hydrophilic fibers and superabsorbent material as recited in claim 1.[4]

Claim 1 is submitted to be non-obvious in view of and patentable over the references of record, and in particular US 2003/091442 (Bewick-Sonntag et al., referenced further herein as Bewick) in combination with U.S. Patent No. 5,836,929 (Bewick-Sonntag et al., referenced further herein as the '929 reference), in that whether considered alone or in combination the references fail to disclose or otherwise suggest an absorbent article comprised of an absorbent structure that is sized and configured for insertion at least partially within

[4] The Action refers to claim 10 at the bottom of page 6. Applicants believe that claim 1 was intended and is treated as such herein.

the vestibule of the female wearer, is constructed at least in part of hydrophilic fibers and superabsorbent material, with the superabsorbent material being in the recited concentration and having the recited gel stiffness index, and wherein the absorbent structure has the recited combination of saturation capacity, retention capacity and intake time.

Bewick discloses an absorbent device having a topsheet for contacting hydrous body tissues. In particular, as illustrated in Figs. 4 and 5, the absorbent device is an interlabial pad 20 composed of three key elements: 1) a highly adaptable absorbent structure able to macroscopically adapt to a unique anatomical shape, 2) a microscopically structured absorbent core/topsheet, and 3) a robust application/insertion design feature. See paragraphs [0016 - 0019]. With particular reference paragraphs [0110 - 0122], the absorbent core 44 is positioned between a topsheet 42 and back sheet 38 and provides the means for absorbing exudates such as menses.

According to Bewick, the absorbent core 44 in one embodiment is a fibrous batt, such as of rayon or a rayon/cotton blend. Paragraph [0113]. In other embodiments, the absorbent core 44 can comprise fibrous superabsorbent material in a concentration in the range of 25% to 100% and in particularly preferred embodiments a concentration above 70%. Paragraph [0114]. In one particular example, the superabsorbent fiber is FIBERDRI type 1162 superabsorbent fibers from Camelot Technologies Ltd. Of Alberta, Canada. Paragraphs [0119 and 0120]. In the working examples 2-5 described by Bewick, the absorbent core 44 comprised 50% of the FIBERDRI type 1162 superabsorbent fibers.

At paragraphs [0309 and 0310], Bewick describe an absorbent capacity test that is comparable to the retention

capacity portion of the Saturation Capacity and Retention Capacity Test recited in claim 1 and described in the present application. Figure 23 of Bewick indicates that the absorbent capacity of the working Examples 2-5 of Bewick have an absorbent capacity of 7.3 grams/gram, which appears to meet the recited retention capacity of claim 1 of at least 3 grams/gram. The superabsorbent concentration for these Examples was 50 percent. See paragraph [0164].

Bewick fails, however, to expressly disclose the combination of a saturation capacity as determined by a Saturation Capacity and Retention Capacity Test of at least about 15 grams/gram, a retention capacity as determined by said Saturation Capacity and Retention Capacity Test of at least about 3 grams/gram, and an intake time for a first insult of said absorbent structure as determined by an Intake and Rewet Test of no more than about 30 seconds. In particular, Bewick fail to disclose, expressly or inherently[5], the recited saturation capacity and intake time. Moreover, there is no suggestion found anywhere in Bewick for modifying the absorbent core thereof to have the recited combination of retention capacity, saturation capacity and intake time. The '929 reference also fails to show or suggest such features (nor does the Office action contend otherwise).

[5] Applicants previously submitted, in their Amendment A filed February 6, 2006, that the recited saturation capacity and intake time were not inherent in the disclosure of Bewick. However, the previously received final Office action makes it clear that the Office's rejection is not based in any part on inherency. See page 7, second paragraph of the final Office action dated May 1, 2006. Likewise, no assertions of inherency are set forth in the present action.

Rather, the Office action asserts that the benefits of optimizing saturation capacity, retention capacity, intake time, and rewet (with respect to dependent claims 22 and 23) would have been known, such that those are result-effective variables. Accordingly, reference is made to the rejection under Bewick, Dulle, Brandt, and Zelazoski to support the rejection. Because the Action relies on essentially the same logic to support the rejection as addressed above in connection with claim 24, Applicants traverse the rejection of these claims for the same reasons set forth above.

For example, Zelazoski as previously noted is specifically directed to a bodyside liner material that has an improved intake time and rewet. Thus, the teachings of Zelazoski are limited entirely to the construction and operation of the liner. There is no teaching or suggestion of the relationship between an absorbent structure such as that of Bewick and intake time (or intake rate) of the absorbent structure. Rather, at the most one skilled in the art may be motivated by Zelazoski to modify the topsheet of Bewick in the manner disclosed by Zelazoski However, such a teaching does not amount to a teaching that intake time is a result-effective variable for an absorbent core and would not motivate one skilled in the art to modify the absorbent core of Bewick to provide the intake time recited in claim 41.

Moreover, applicants note that the absorbent structure recited in claim 1 is not intended to "minimize" intake performance. See, e.g., the Table of Fig. 12 again in which the intake times for the control samples (1-5) were, on the whole, much less than the intake times for the absorbent structures (6-11) according to the present invention. Nor is the absorbent structure recited in claim 1 intended to

"maximize" saturation capacity and/or retention capacity as discussed above.

For these reasons, claim 1 is submitted to be non-obvious in view of and patentable over the references of record.

Claims 3, 4, 6-16, 18-23 and new claims 56-59 depend directly or indirectly from claim 1 and are submitted to be patentable over the cited references for the same reasons as claim 1.

Conclusion

In view of the above, applicant respectfully requests favorable consideration and allowance of claims 1, 3, 4, 6-16, 18-25, 28-41 and 44-63 as now presented.

The Commissioner is hereby authorized to charge any fee deficiency in connection with this Response to Non-Final Office Action to Deposit Account Number 19-1345 in the name of Senniger Powers.

Respectfully submitted,

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